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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 JERMAINE D. DOSS,

9 Plaintiff,

10 v.

11 JANSSEN PHARMACEUTICAL, INC., and  
12 JOHNSON & JOHNSON CORPORATION,

13 Defendants.

CASE NO. C18-1314RSM

ORDER REVOKING IFP STATUS ON  
APPEAL

14 This matter is before the Court on referral from the United States Court of Appeals for  
15 the Ninth Circuit. Dkt. #49. Plaintiff was previously granted leave to proceed in forma pauperis  
16 (“IFP”) in this matter. Dkt. #7. Accordingly, the Court of Appeals referred the matter back to  
17 this Court “for the limited purpose of determining whether in forma pauperis status should  
18 continue for this appeal or whether the appeal is frivolous or taken in bad faith. Dkt. #49 at 1  
19 (citing 28 U.S.C. § 1915(a)(3)).

20 An indigent party who cannot afford the expense of pursuing an appeal may file a motion  
21 for leave to proceed IFP. FED. R. APP. P. 24(a); 28 U.S.C. § 1915(a)(1). Where, as here, the  
22 party was permitted to proceed IFP in the district court, the party may proceed IFP on appeal  
23 without further authorization unless the district court certifies in writing that the appeal is not  
24 taken in good faith or that the party is not otherwise entitled to proceed IFP. FED. R. APP. P.

1 24(a)(3); 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court  
2 certifies in writing that it is not taken in good faith.”). An appeal is taken in “good faith” where  
3 it seeks review of at least one issue or claim that is found to be “non-frivolous.” *Hooker v.*  
4 *American Airline*, 302 F.3d 1091, 1092 (9th Cir. 2002).

5 An issue is “frivolous” where it “lacks an arguable basis either in law or in fact.” *Neitzke*  
6 *v. Williams*, 490 U.S. 319, 325 (1989). Legally frivolous claims are those “based on an  
7 indisputably meritless legal theory,” such as claims against defendants who are immune from  
8 suit or for infringement of a legal interest that clearly does not exist. *Id.* at 327. Factually  
9 frivolous claims are those premised on “clearly baseless” factual contentions, such as claims  
10 “describing fantastic or delusional scenarios.” *Id.* at 327–28.

11 Here, the Court cannot conclude that the appeal is taken in good faith. The Court granted  
12 Plaintiff several extensions of time in this matter, Dkts. #24, #29, and #41, including an extension  
13 of time to respond to the Defendants’ Motion to Dismiss (Dkt. #41). As that extension was  
14 expiring, Plaintiff sought appointed counsel for the second time. Dkts. #19 and #42. Plaintiff  
15 did not otherwise respond to the Defendants’ Motion to Dismiss. The Court refused to appoint  
16 counsel on the basis that nothing about Plaintiff’s case was exceptional and that Plaintiff had  
17 made no effort to remedy the underlying deficiencies in his Complaint. Dkt. #45. Further, the  
18 Court took Plaintiff’s failure to respond, in any way, to Defendants’ Motion to Dismiss as a  
19 concession that the motion had merit. Because Plaintiff has not meaningfully pursued his action  
20 and failed to substantively defend against the Defendants’ Motion to Dismiss, his appeal is  
21 frivolous or taken in bad faith.

22 Accordingly, the Court hereby FINDS and CERTIFIES that Plaintiff’s appeal is frivolous  
23 or taken in bad faith and ORDERS that Plaintiff’s in forma pauperis status is REVOKED. The  
24 Clerk is directed to forward this Order to the United States Court of Appeals for the Ninth Circuit,

1 with reference to *Doss v. Janssen Pharmaceutical, Inc.*, 19-35815 (9th Cir. 2019). The Clerk is  
2 further requested to send a copy of this Order to Plaintiff at his last known mailing address.

3 Dated this 30 day of September 2019.

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5 RICARDO S. MARTINEZ  
6 CHIEF UNITED STATES DISTRICT JUDGE  
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